

## 2007 MINUTES OF THE STATE BOARD OF EQUALIZATION

Thursday, February 1, 2007

The Board met at its offices at 450 N Street, Sacramento, at 10:40 a.m., with Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### SALES AND USE TAX APPEALS HEARING

Lazaro Garcia, 304496 (GH)

7-1-98 to 6-30-01, \$59,159.10 Tax, \$6,014.62 Penalty

For Petitioner:

Raymond Sweeney, Attorney

Rodolfo Benavides, Accountant

Lazaro Garcia, Taxpayer

For Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether additional allowance for pilferage should be made to account for theft of cash and merchandise.

Whether taxpayer was negligent.

Action: Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Robert L. Reynolds and Donald R. Reynolds, 208940 (JH)

7-1-98 to 6-30-01, \$122,378.93 Tax

For Petitioner:

Jason Harrel, Attorney

Abe Golomb Representative

For Department:

Robert Stipe, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether petitioner was a retailer engaged in business in this state obligated to collect, and remit, use tax on its sales directly to California consumers.

Whether petitioner is liable for tax on its drop shipments directly to California consumers per retail sales made by retailers who were not engaged in business in California.

Whether petitioner is entitled to relief from its duty to collect use tax with respect to its sales delivered to California consumers based on prior audit advice.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007**

Private Travel Options, Inc., 299788 (UT)

April 28, 2003, \$29,450.00 Tax

For Petitioner:

Ward Hendrickson, Taxpayer

Donald R. Wild, Attorney

Alban Lang, Representative

Conrad M. Davis, CPA

For Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner's purchase and use of the aircraft is exempt from use tax.

Action: Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 12:15 p.m. and reconvened at 1:20 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
FEBRUARY 1, 2007**

Lazaro Garcia, 304496 (GH)

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. Mr. Leonard made a substitute motion to delete the negligence penalty, otherwise redetermined as recommended by the Appeals Division. The substitute motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu, and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Robert L. Reynolds and Donald R. Reynolds, 208940 (JH)

Final Action: Ms. Chu moved that the petition be redetermined as recommended by the Appeals Division. Mr. Leonard made a substitute motion that a memorandum opinion be drafted by the Appeals Division and returned to the Board for approval, otherwise redetermined as recommended by the Appeals Division. The substitute motion was seconded by Ms. Chu and unanimously carried Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

Private Travel Options, Inc., 299788 (UT)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007****LEGAL APPEALS MATTERS, CONSENT**

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Arrow International, Inc., 250017 (OHB)

10-1-96 to 12-31-99, \$1,332,415.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Awad Nakhleh Baddour, 378385 (ET)

September 5, 2006, \$436.75 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Chang Yun Lee, 380648 (ET)

August 16, 2006, \$303.76 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Jaffers, Inc., 378377 (ET)

August 30, 2006, \$2,354.96 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Anilco, Inc., 378383 (ET)

August 2, 2006, \$1,213.83 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Maypearl, Inc., 380687 (ET)

August 10, 2006, \$1,400.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Cruz Javier Garcia, 378386 (ET)

August 1, 2006, \$219.14 Approximate Value

Action: Determined that staff properly seized the tobacco products.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Craig Dillard, 342261.; Tony Jibilian, 346087*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

***Note: These minutes are not final until Board approved.***

**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007****Robert R. Beatty, 341451**

1998, \$1,011.75 Claim for Refund

2000, \$977.52 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Alfred J. Braun, 335261**

2003, \$3,833.00 Assessment, \$958.25 Late Filing Penalty, \$958.25 Demand Penalty, \$90.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

**Jason G. Brent, 347607**

2004, \$4,640.82 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Gloria Cox, 335266**

2003, \$296.00 Tax, \$100.00 Late Filing Penalty, \$74.00 Demand Penalty, \$90.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

**Destino Properties, LLC, 339961**

2002, \$800.00 Tax, \$164.00 Late Payment Penalty

Action: Sustain the action of the Franchise Tax Board.

**Craig Dillard, 342261**

1994, \$733.78 Claim for Refund

1995, \$657.87 Claim for Refund

1996, \$600.00 Claim for Refund

Action: The Board took no action.

**Eli Lilly and Company, 330522**

1997, \$80,189.00 Assessment, \$132,138.03 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Florentina M. Hernandez, 334478**

2001, \$1.00 or more Claim for Refund

2002, \$1.00 or more Claim for Refund

2003, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Kasey C. Higgins, 325561**

1999, \$296.00 Assessment

2000, \$1,649.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007****Ian H. Pare, 345426**

2003, \$2,131.00 Tax, \$532.75 Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

**Tony Jibilian, 346087**

1988, \$10,100.19 Claim for Refund

1989, \$17,069.78 Claim for Refund

1990, \$6,950.89 Claim for Refund

1991, \$5,106.09 Claim for Refund

1992, \$8,359.88 Claim for Refund

1993, \$2,547.41 Claim for Refund

1994, \$2,041.38 Claim for Refund

Action: The Board took no action.

**Richard Petrick, 343103**

2003, \$156.00 Tax, \$100.00 Late Filing Penalty, \$39.00 Notice and Demand Penalty, \$ 120.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

**Ubaldo Saucedo, 343021**

2003, \$523.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Wilma R. Shanks, 332447**

2002, \$3,775.00 Assessment

Action: Modify the action of the Franchise Tax Board.

**Jose Solano, 350038**

2003, \$1,241.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Noelle C. Tennis, 337100**

1997, \$509.47 Claim for Refund

1998, \$2,028.62 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Charles Everett Travis, 337095**

2003, \$499.00 Tax, \$124.75 Late filing Penalty, \$1662375 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

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**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007**

David Y. Uyeno, 344820

2003, \$5,779.46 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Theresa Vernon, 335566

2003, \$2,168.00 Tax, \$542.00 Late Filing Penalty, \$542.00 Notice and Demand Penalty, \$90.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Loran Jay Forbes, 299082

2000, \$1,472.00 Tax, \$368.00 Late Filing Penalty, \$5,000.00 Frivolous Appeal Penalty

2001, \$1,765.00 Tax, \$441.25 Late Filing Penalty, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Scott Lockard, 311188

2002, \$983.00 Tax, \$245.75 Late Filing Penalty, \$253.75 Notice and Demand Penalty, \$90.00 Filing Enforcement Fee, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Cynthia Fowler*,  
348940.

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Mark Buchok, 335929

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Nora J. Campman, 351444

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Ogust Carmel, 346037

2005, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Regina L. Didley, 341160

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007**

Sydell Dublin, 296072

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Cynthia Fowler, 348940

2005, \$347.50

Action: The Board took no action.

Carolyn Gray, 345500

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Robert L. Hamilton, 347629

2005, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Layla Ibrahim, 356478

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Jericho Johnson, 348774

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Asberry Jones (Deceased), 349006

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

George Liang, 339287

2004, \$400.00

Action: Sustain the action of the Franchise Tax Board.

Silvia Mejia, 352232

2004, \$1.00 or more

Action: Reverse the action of the Franchise Tax Board.

Maria R. Martinez, 340172

2005, \$345.00

Action: Sustain the action of the Franchise Tax Board.

Douglas Snead, 351662

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007**

Yolanda Swayze, 349040  
2005, \$1,926.07

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES  
AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Fujitsu IT Holdings, Inc., 255923 (GH)  
1-1-99 to 12-31-01, \$2,897,338.19

Action: Approve the redetermination as recommended by staff.

Applied Materials, Inc., 218838 (OHC)  
1-1-99 to 12-31-01, \$42,062,830.37

Action: Approve the redetermination as recommended by staff.

Kulicke & Soffa Industries, Inc., 266307 (OHB)  
1-1-99 to 6-30-02, \$661,192.19

Action: Approve the redetermination as recommended by staff.

Ikon Office Solutions West, Inc., 334208 (OHC)  
10-1-98 to 9-30-01, \$1,376,567.43

Action: Approve the redetermination as recommended by staff.

TLC Multimedia, Inc., 150679 (JH)  
7-1-98 to 6-30-01, \$173,525.48

Action: Approve the redetermination as recommended by staff.

C.D. & R's Oil, Inc., 254365, (KH)  
4-1-99 to 9-30-02, \$172,224.44

Action: Approve the redetermination as recommended by staff.

Jawid Siddiq, 351529 (CH)  
1-1-03 to 6-30-03, \$62,928.29

Action: Approve the redetermination as recommended by staff.

Praxair Distribution, Inc., 372057 (OHA)  
1-1-00 to 12-31-02, \$107,069.08

Action: Approve the relief of penalty as recommended by staff.

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**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007**

Tustin Nissan, 380114 (EA)

10-1-05 to 12-31-05, \$62,281.30

Action: Approve the relief of penalty as recommended by staff.

John L. Sullivan Chevrolet, Inc., 380116 (KH)

7-1-06 to 7-31-06, \$51,060.00

Action: Approve the relief of penalty as recommended by staff.

Associated Ready Mixed Concrete, 380117 (AA)

5-1-06 to 6-15-06, \$92,176.74

Action: Approve the relief of penalty as recommended by staff.

PeoplePC, Inc., 346815 (BH)

7-1-99 to 6-30-02, \$244,830.11

Action: Approve the denial of claim for refund as recommended by staff.

United Auto Credit Corporation, 379683 (EAA)

1-1-03 to 12-31-05, \$95,228.11

Action: Approve the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

The Board deferred consideration of the following matter: *Capitol One Auto Finance, Inc., 341976 (OHC)*

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *Frito-Lay, Inc., 377812*, the Board made the following orders:

Vortex Marine Construction, Inc., 377159 (UT)

9-14-99 to 9-14-99, \$266,873.22

Action: Approve the credit and cancellation as recommended by staff.

Loring Cruz, Inc., 341714 (AA)

1-1-01 to 12-31-03, \$163,370.53

Action: Approve the credit and cancellation as recommended by staff.

Sukh Nal, Inc., 379714 (JHF)

4-1-03 to 6-30-03, \$70,215.48

Action: Approve the credit and cancellation as recommended by staff.

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**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007**

Precision Small Engine Company, Inc., 379796 (OHC)

4-1-97 to 3-31-05, \$68,124.28

Action: Approve the credit and cancellation as recommended by staff.

County of Los Angeles Auditor, 354449 (AA)

7-01-05 to 9-30-05, \$62,268.84

Action: Approve the refund as recommended by staff.

Keystone Engineering Company, 350182 (AA)

7-1-02 to 12-31-04, \$69,785.76

Action: Approve the refund as recommended by staff.

Putzmeister, Inc., 360005 (OHA)

7-1-04 to 9-30-04, \$57,056.64

Action: Approve the refund as recommended by staff.

Cicso Systems, Inc., 358651 (GH)

4-1-00 to 3-31-04, \$4,856,901.79

Action: Approve the refund as recommended by staff.

South Coast Medical Center, 330144 (EAA)

7-1-02 to 9-30-05, \$202,621.03

Action: Approve the refund as recommended by staff.

Fry's Electronics, Inc., 376763 (GH)

10-01-04 to 6-30-05, \$110,653.80

Action: Approve the refund as recommended by staff.

Minor Theatre Corporation, 308886 (JH)

1-1-02 to 12-31-04, \$14,461.30

Action: Approve the refund as recommended by staff.

Frito-Lay, Inc., 377812 (OHC)

7-1-01 to 9-30-04, \$252,838.05

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

Ford Motor Company, 334838 (OHA)

10-1-98 to 6-30-05, \$1,346,757.27

Action: Approve the refund as recommended by staff.

General Instrument Corporation, 359342 (OHB)

4-1-03 to 12-31-04, \$59,758.23

Action: Approve the refund as recommended by staff.

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**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007**

San Jose Sierra, LLC, 318320 (OH)

4-1-05 to 5-11-05, \$96,350.60

Action: Approve the refund as recommended by staff.

Rohde & Schwarz, Inc., 328894 (OHB)

7-1-04 to 6-30-05, \$219,209.38

Action: Approve the refund as recommended by staff.

Corillian Corporation, 309527 (OH)

1-1-02 to 12-31-04, \$104,128.16

Action: Approve the refund as recommended by staff.

WFS Financial, Inc., 375276 (EAA)

1-1-06 to 3-31-06, \$1,006,059.50

Action: Approve the refund as recommended by staff.

Pegasystems, Inc., 298317 (OHB)

4-1-97 to 3-31-03, \$636,295.00

Action: Approve the refund as recommended by staff.

Mykrolis Corporation, 345607 (OHB)

7-1-01 to 9-30-03, \$51,806.70

Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 308841 (OHB)

1-1-02 to 6-30-05, \$967,209.31

Action: Approve the refund as recommended by staff.

Capitol One Auto Finance, Inc., 341976 (OHC)

4-1-05 to 9-30-05, \$676,941.42

Action: The Board took no action.

United Auto Credit Corporation, 344669 (EAA)

1-1-03 to 12-31-05, \$526,294.82

Action: Approve the refund as recommended by staff.

Discus Dental Software, Inc., 362188 (AS)

1-1-06 to 3-31-06, \$59,676.08

Action: Approve the refund as recommended by staff.

Paisano Publications, LLC, 372166 (AC)

4-1-03 to 3-31-06, \$63,661.76

Action: Approve the refund as recommended by staff.

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**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007**

Galtas Flooring Depot, LLC, 377567 (JHF)

7-1-03 to 12-31-05, \$66,697.69

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, DENIAL OF CLAIM FOR REFUND, RELIEF OF INTEREST AND DENIALS OF RELIEF OF INTEREST, CONSENT**

With respect to the Special Taxes Matters, Relief of Penalties, Denial of Claim for Refund, Relief of Interest and Denial of Relief of Interest, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *Valero Marketing & Supply Company, 377709, American Family Life Assurance Company, 378441, Redwood Fire & Casualty Insurance Company, 377599* in accordance with Government Code section 7.9, the Board made the following orders:

**Valero Marketing & Supply Company, 377709 (MT)**

6-1-03 to 6-30-03, \$54,130.03

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**American Family Life Assurance Company, 378441 (ET)**

7-1-06 to 9-30-06, \$122,574.30

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**Redwood Fire & Casualty Insurance Company, 377599 (ET)**

7-1-06 to 9-30-06, \$131,881.70

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**Luis Marmol, 357031 (EF)**

1-1-03 to 12-31-04, \$75,616.86

Action: Approve the denial of claim for refund as recommended by staff.

**Ultramar, Inc., 379720 (MT)**

1-1-01 to 12-31-01, \$162,950.11

Action: Approve the relief of interest as recommended by staff.

**Valero Refining Company – California, 379666 (MT)**

1-1-01 to 12-31-01, \$72,212.58

Action: Approve the relief of interest as recommended by staff.

## 2007 MINUTES OF THE STATE BOARD OF EQUALIZATION

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Ultramar, Inc., 379720 (MT)

1-1-01 to 12-31-01, \$134,479.31

Action: Approve the denial of relief of interest as recommended by staff.

Valero Refining Company – California, 379666 (MT)

1-1-01 to 12-31-01, \$59,595.51

Action: Approve the denial of relief of interest as recommended by staff.

### **SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel, and Ms. Mandel voting yes, Ms. Mandel not participating in *Tokio Marine & Nichido Fire LTD, 339381*, *Beecher Carlson Insurance Services, Inc., 381572*, *Affirmative Insurance Company, 380986* in accordance with Government Code section 7.9, the Board made the following orders:

City of Los Angeles, 356140 (ET)

7-1-01 to 6-30-04, \$104,537.14

Action: Approve the refund as recommended by staff.

Tokio Marine & Nichido Fire LTD, 339381 (ET)

1-1-02 to 12-31-04, \$1,283,819.55

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Beecher Carlson Insurance Services, Inc., 381572 (ET)

6-1-06 to 6-30-06, \$72,009.00

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Affirmative Insurance Company, 380986 (ET)

7-1-06 to 9-30-06, \$114,864.03

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

### **LEGAL APPEALS MATTERS, ADJUDICATORY**

#### **PUBLIC COMMENT**

Speakers: Mr. Torgny Nilsson, General Counsel, Sierra Railroad Company

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United Parcel Service, Inc., 98724, 126831, 131381, 153034, 192709, 242411 (OH)  
United Parcel Service, Inc., 98726, 131383, 131431, 153036, 207917, 242304 (EAA)  
United Parcel Service, Inc., 272826 (CH)

10-1-97 to 6-30-03, \$5,308,711.00 Claim for Refund

Considered by the Board: June 27, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petitions for rehearing be granted.

**Pascucci, Inc., 254331 (GH)**

7-1-99 to 3-31-03, \$60,058.74 Tax, \$00.00 Negligence Penalty

Considered by the Board: September 13, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Steel moved that the negligence penalty be abated, otherwise redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**Hector Gonzalez, 251992 (AA)**

10-1-95 to 12-31-02, \$33,089.52 Tax, \$8,559.17 Failure to File Penalty, \$3,625.39 Negligence Penalty

Considered by the Board: September 13, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**Canyon Motors, Ltd., 219451 (AS)**

1-1-00 to 12-31-01, \$270,036.54 Tax, \$27,003.69 Negligence Penalty

Considered by the Board: September 13, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**Mikhail Obolsky, 186902 (BH)**

7-1-97 to 12-31-99, \$122,127.77 Tax, \$12,506.65 Negligence Penalty

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

## 2007 MINUTES OF THE STATE BOARD OF EQUALIZATION

**Thursday, February 1, 2007**

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Sierra Railroad Company, 287920, 288213 (JHF)

10-1-00 to 9-30-03, \$10,867.07 Tax

Considered by the Board: December 12, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

Argonaut Group, Inc., 287738

1994, \$52,199.00 Claim for Refund

1995, \$690,951.00 Claim for Refund

1996, \$16,265.00 Claim for Refund

1997, \$884,165.00 Claim for Refund

1998, \$414,238.00 Claim for Refund

1999, \$1,311,083.00 Claim for Refund

Considered by the Board: June 27, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision granting the petition for rehearing.

BG Star Productions, Inc., 268579

1998, \$112,394.00 Assessment

1999, \$62,250.00 Assessment

Billy Wayne Blanks and Gayle H. Blanks, 268581

1998, \$663,038.00 Assessment

1999, \$987,125.00 Assessment

Considered by the Board: February 1, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision granting the petition for rehearing.

**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007**

Kenneth A. Sauer and Eliza B. Sauer, 308089

1999, \$2,207.00 Tax, \$451.73 Late Filing Penalty

Considered by the Board: March 7, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision denying the petition for rehearing.

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY**

Aetna Life Insurance Company, 367182 (ET)

1-1-05 to 12-31-05, \$1,000,250.31

Considered by the Board: November 20, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved the refund as recommended by staff.

**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE****PROPERTY TAX MATTERS****Board Roll Changes**

2003, 2004, 2005 and 2006 State-Assessed Property

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, and Ms. Chu voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2003, 2004, 2005 and 2006 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 2.1).

Exhibits to these minutes are incorporated by reference.

**OFFERS-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Yee, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Richard Mink* as recommended by staff.

**Note: These minutes are not final until Board approved.**



**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007****PUBLIC HEARINGS****Property Taxes – State Assessee's Presentations on Capitalization Rates & Other Factors Affecting Values**

Stanley Siu, Chief, State-Assessed Properties Division, made introductory remarks regarding Capitalization Rates and other Factors Affecting Values (Exhibit 2.2).

Speakers: Peter Michaels, Cooper, White & Cooper  
State Assessed Gas/Electric, Intercounty Pipeline  
Telephone and Railroad Companies  
Lenny Goldberg, California Tax Reform Association

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board voted that the obsolescence issues for equipment of state-assessed telecommunications companies be reviewed by the Property Tax Committee.

**Proposed Amendments to Sales and Use Tax Regulation 1571, *Florist*.**

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed amendments to Regulation 1571, *Florist* (Exhibit 2.3).

Speakers: Bob Cendejas, Just Flowers & Teleflowers

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the regulation as published.

**OTHER CHIEF COUNSEL MATTERS****2007-2008 Overview of FTB Appeals on the Horizon**

Mr. Davies, Chief Counsel, Franchise Tax Board, made a 2007 and 2008 Overview of Franchise Tax Board Appeals.

**Section 100 Change to Sales and Use Tax Regulation 1668, *Sales for Resale***

Jean Ograd, Assistant Chief Counsel, Settlement Division, Legal Department, made introductory remarks regarding the section 100 change to the Sales and Use Tax Regulation 1668, *Sales for Resale* (Exhibit 2.4).

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the Section 100 Change to Sales and Use Tax Regulation 1668, *Sales for Resale*.

**Note: These minutes are not final until Board approved.**

**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007****PROPERTY TAX****Board Consideration of Findings and Decisions****Broadwing Communications, LLC (7630), 359204**

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, and Ms. Mandel voting yes, Ms. Chu abstaining, the Board approved the Findings and Decision as recommended by staff.

**Calpine Construction Finance Company (1132), 358542****Delta Energy Center, LLC (1128), 358541****Metcalf Energy Center, LLC (1133), 358540****Pastoria Energy Facility, LLC (1131), 358544**

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, and Ms. Mandel voting yes, Ms. Chu abstaining, the Board approved the Findings and Decision as recommended by staff.

**Covad Communications Company (7706), 358128**

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, and Ms. Mandel voting yes, Ms. Chu abstaining, the Board approved the Findings and Decision as recommended by staff.

**Cricket Communications, Inc. (2762), 358157 & 359136**

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, and Ms. Mandel voting yes, Ms. Chu abstaining, the Board approved the Findings and Decision as recommended by staff.

**High Desert Power Trust 2000-A (1127), 359070**

Action: Board took no action.

**Lodi Gas Storage, LLC (198), 358341 & 359133**

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, and Ms. Mandel voting yes, Ms. Chu abstaining, the Board approved the Findings and Decision as recommended by staff.

**Los Esteros Critical Energy Facility LLC (1143), 358545**

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, and Ms. Mandel voting yes, Ms. Chu abstaining, the Board approved the Findings and Decision as recommended by staff.

**Southern California Edison Company (149), 359135**

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and duly carried, Mr. Leonard, and Ms. Steel, voting yes, Ms. Yee voting no, Ms. Chu abstain, Ms. Mandel not participating, the Board approved the Findings and Decision as recommended by staff.

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**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007**

Southern California Gas Company, Inc. (149), 342132

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Ms. Chu voting yes, Ms. Chu abstaining, Ms. Mandel not participating, the Board approved the Findings and Decision as recommended by staff.

SureWest Televideo (7961), 358815

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, and Ms. Mandel voting yes, Ms. Chu abstain, the Board approved the Findings and Decision as recommended by staff.

**OTHER CHIEF COUNSEL MATTERS****Self-Extinguishing Cigarettes**

Monica Brisbane, Tax Counsel, Legal Department, made introductory remarks regarding the self-extinguishing cigarettes. The Tax and Fee Programs Division, Legal Department, were available to answer questions regarding the self-extinguishing cigarettes. (Exhibit 2.5).

Action: Ms. Chu moved that the Board adopt alternative one. The motion was seconded by Ms. Mandel but failed to carry, Ms. Chu and Ms. Mandel voting yes, Ms. Yee, Mr. Leonard and Ms. Steel voting no. Ms. Yee made a substitute motion that the Board implement the act to the extent provided by the current statute. Ms. Yee rescinded her motion.

Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved alternative one with the following modifications: No "clean-up" legislation would be sought and staff should implement the Self Extinguishing Cigarette Act ("Act") to the extent required under the statutes, which implementation should include the following: (1) The Board's Investigations staff will inspect for packages of cigarettes not in compliance with the Act during the course of its regular inspections, (2) if packages of cigarettes are found to violate the Act only, a report will immediately be made to the State Fire Marshall sufficient to enable the State Fire Marshall to seize or take other enforcement action, and (3) seizure of non-compliant products by the Board's Investigations staff will occur only when a package of cigarettes is found to violate both the Act and the Licensing Act and/or the Tax Law and will be made under the Board's authority to seize under the Licensing Act and/or the Tax Law. The Board's execution of this implementation will commence only when the State Fire Marshall certifies cigarettes that are compliant with the Act, approves package markings, and informs the Board of these approved markings in a suitable electronic format.

**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

***Note: These minutes are not final until Board approved.***

**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007**

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 2.6).

Arlo Gilbert, Business Taxes Specialist III, Property and Special Taxes  
Department, Headquarters  
Diane J. Valine, Tax Technician III, Return Analysis Unit, Headquarters  
Gloria Ledesma, Tax Technician II, Riverside District Office

Action: Approve the 2007 Timber Advisory Committee Membership.

With respect to the Administrative Matters, Consent Agenda, upon motion of Mr. Leonard, seconded Ms. Yee by and unanimously carried, Ms. Yee, Mr. Leonard, and Ms. Mandel voting yes, Ms. Chu and Ms. Steel not participating, the Board made the following orders:

Action: Approve the Board Meeting Minutes of October 11, 2006.

With respect to the Administrative Matters, Consent Agenda, upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Action: Approve the 2007 Board Workload Plan Option B - July through December.

**ADMINISTRATIVE SESSION****BOARD COMMITTEE REPORTS****Legislative Committee**

Action: Upon motion of Ms. Yee, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report with the reflection of Ms. Steel's original committee vote on Proposal 1-4 from a "Yes" vote to a "No" vote (Exhibit 2.7).

**Business Taxes Committee**

Action: Upon motion of Ms. Yee, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report (Exhibit 2.8).

**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007****Customer Services and Administrative Efficiency Committee**

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report (Exhibit 2.9).

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 3:52 p.m. and reconvened immediately in closed session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**CLOSED SESSION**

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 4:38 p.m. and reconvened immediately in open session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**CHIEF COUNSEL MATTERS****RULEMAKING****Update and Overview of the *Board of Equalization, Rules for Tax Appeals***

Robert Lambert, Acting Assistant Chief Counsel, Legal Department, gave an update and overview regarding the *Board of Equalization, Rules for Tax Appeals*. The Board postponed *Rules for Tax Appeals, Chapter 3, Property Taxes*, to the March meeting. (Exhibit 2.10).

**OTHER ADMINISTRATIVE MATTERS****Executive Director's Report**

Ramon Hirsig, Executive Director, provided an update regarding the Strategic Plan (Exhibit 2.11).

Ramon Hirsig, Executive Director, provided an update regarding Cal Aware and PRA Requests Status.

Ramon Hirsig, Executive Director, introduced Todd Gilman, Chief, Taxpayers' Rights and Equal Employment, who provided an update regarding the Pro Bono Program.

Ramon Hirsig, Executive Director, introduced Anita Gore, Chief, Communications Office, who provided an update regarding the Web Services Unit.

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**2007 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, February 1, 2007****Chief Counsel Report**

Kristine Cazadd, Chief Counsel, Legal Department and Jeff Vest, Assistant Chief Counsel, Appeals Division, Legal Department, provided a report on the Status of Appeals – Comprehensive Report.

Kristine Cazadd, Chief Counsel, Legal Department and Jan Thurston, Assistant Chief Counsel, Legal Department and Monica Brisbane, Tax Counsel, Legal Department, provided a report on Tobacco Master Settlement Agreement Litigation (Exhibit 2.12).

**Deputy Director's Reports**

Randie L. Henry, Deputy Director, Sales and Use Tax Department provided an update regarding the status of e-Services and Retail Licensing Enforcement.

David J. Gau, Deputy Director, Property and Special Taxes Department provided an update regarding the status of Valuation Studies and the status of Cigarette Tax (excise and sales) on invoices of out-of-state purchases (Exhibit 2.13).

Karen Johnson, Deputy Director, Administration Department provided an update regarding the status of CEA positions, Windows project, and gave a report on BOE Budget Issues.

The Board adjourned at 5:55 p.m.

*The foregoing minutes are adopted by the Board on April 25, 2007.*

Note: The following cases were removed from the calendar prior to the meeting: *Inner Circle Entertainment II, Inc.*, 283636; *Allergan Sales, Inc.*, 357255 *Allergan Sales, LLC.*, 356791; *Allergan Sales, LLC.*, 357254; and, *Long Beach Acceptance Corporation*, 198737; *Sprint Nextel Corporation* (2737)